



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

4.37.1

MARCH 6, 2023

EFFECTIVE DATE

(03-06-2023)

PURPOSE

- (1) This transmits revised IRM 4.37.1, Financial Products and Transactions, Financial Products Specialty.

MATERIAL CHANGES

- (1) To conform to IRM 1.11.2.2.5, Address Management and Internal Controls, content from the old IRM was updated and rearranged as follows:

Old IRM Cite	Old Title	New IRM Cite	New Title
New	n/a	4.37.1.1.2	Authority
4.37.1.1.4	Responsibilities and Organization	4.37.1.1.3	Roles and Responsibilities
4.37.1.1.2	Program Objectives	4.37.1.1.4	Program Management and Review
New	n/a	4.37.1.1.5	Program Controls
4.37.1.1.3	Acronyms	4.37.1.1.6	Terms and Acronyms

- (2) IRM 4.37.1.1: Revised for plain language and changed policy owner to “LB&I Policy under the Strategy, Policy, and Governance office in the Assistant Deputy Commissioner Compliance Integration organization.
- (3) IRM 4.37.1.1.1: Background revised for plain language.
- (4) IRM 4.37.1.1.3: Roles and Responsibilities revised for plain language.
- (5) IRM 4.37.1.2: Revised title and content for plain language.
- (6) IRM 4.37.1.2.1: Removed outdated instructions related to ISCP and Form 3210. Added reference to IRM 4.46 for ISCP instructions.
- (7) IRM 4.37.1.2.2: Added mandatory referral for HII cases.
- (8) IRM 4.37.1.3.1: Added reference to IRM 4.46 for workpapers and report writing. Updated citations.
- (9) Removed Exhibit 4.37.1-1 showing outdated graphic with MIRA Feedback Form screen shots.
- (10) Renumbered Exhibit 4.37.1-2 Sample FPS Report Cover Sheet, to Exhibit 4.37.1-1, and updated the graphic.
- (11) Renumbered Exhibit 4.37.1-3 Acronyms, to Exhibit 4.37.1-2, and updated the table.

EFFECT ON OTHER DOCUMENTS

IRM 4.37.1 dated August 12, 2019 is superseded.

AUDIENCE

Financial products specialists and their managers in Large Business & International (LB&I).

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4.37.1

Financial Products Specialty

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4.37.1.1
(03-06-2023)
Program Scope and Objectives

- (1) **Purpose:** Define the Financial Products Specialty (FPS) program. Describe the organization of the specialty area and provide roles and responsibilities. Describe how the specialty program coordinates with the LB&I Examination Process (LEP) including issue management and related definitions.
- (2) **Audience:** Financial products specialists and their managers in Large Business & International (LB&I).
- (3) **Policy Owner:** LB&I Policy under the Strategy, Policy, and Governance office in the Assistant Deputy Commissioner Compliance Integration (ADCCI) organization.
- (4) **Program Owner:** Financial Institutions and Products (FIP) is responsible for the administration, procedures, and updates related to the FPS program.
- (5) **Primary Stakeholders:** LB&I executives, senior managers, frontline managers, program analysts, FPS employees and other IRS employees who may request the services of an FP specialist.

4.37.1.1.1
(03-06-2023)
Background

- (1) The FPS Program evolved from tax shelters involving commodity, option and government security straddles into a vast array of complex tax issues.
- (2) FPS can impact all types of tax examinations, including examinations of:
 - a. Individuals
 - b. Partnerships
 - c. Corporations
 - d. Exempt Organizations
 - e. Employee Plans
 - f. Estates/Trusts
 - g. Real Estate Investment Trusts (REITs)
 - h. Real Estate Mortgage Investment Conduits (REMICs)
 - i. Regulated Investment Companies (RICs)
- (3) Financial products are instruments utilized in the global marketplace. They include, but are not limited to, conventional financial instruments such as:
 - a. Stocks
 - b. Bonds
 - c. Mortgages
 - d. Foreign Currency
 - e. Physical Commodities
- (4) Financial products also include derivatives of conventional financial instruments, such as:
 - a. Forward Contracts
 - b. Option Contracts
 - c. Futures Contracts
 - d. Notional Principal Contracts (swaps)
 - e. Stripped Mortgage-Backed Securities
 - f. Structured Notes
 - g. Hybrid and/or Synthetic Securities
- (5) Derivative securities markets have revolutionized how capital is raised and risk is managed. Financial products are primarily marketed by investment bankers

and securities firms. Inter-bank lending and borrowing, foreign exchange trading and security sales occur in global markets, twenty-four hours a day.

- (6) Financial arrangements include re-packaging new products or hedging with existing products. Transactions often arbitrage different tax laws that exist between the U.S. and foreign markets and occur in U.S. and foreign subsidiaries or branches.
- (7) Financial products often involve the financing of business or the direct products or services rendered by a business. FPS may also be used to manage direct product risk, for example, the hedging of price changes.
- (8) Generally, issues center around functions handled by the Chief Financial Officer, Treasurer, Comptroller or any other department responsible for worldwide funding, risk management, investing or refinancing in corporations, rather than the tax department.
- (9) Financial products tax issues exist for not only the dealer who creates and markets transactions, but also for the customer or end user of the product or transaction. Issues can be geographic. For example, there may be many dealer issues in locations with major financial centers and few or no dealer issues in locations where there are no major financial markets.
- (10) Financial product tax issues involve:
 - a. Character
 - b. Amount
 - c. Timing
 - d. Source
 - e. Debt or equity determinations on hybrid financial instruments
- (11) Approaching a financial products issue begins with a series of questions such as:
 - What is the financial product?
 - Where is it traded?
 - Is it traded on an exchange?
 - Is it traded at all?
 - Why was the transaction done?
 - Who is the taxpayer?

4.37.1.1.2
(03-06-2023)
Authority

- (1) By law, the IRS has the authority to conduct examinations under Title 26, Internal Revenue Code, Subtitle F - Procedure and Administration, Chapter 78, Discovery of Liability and Enforcement of Title, Subchapter A, Examination and Inspection, which includes but is not limited to:

- IRC 7602, Examination of books and witnesses
- IRC 7605, Time and place of examination

Note: Additional information related to conducting examinations is contained in 26 CFR 601.105, Statement of Procedural Rules.

- (2) For additional information see IRM 4.10, Examination of Returns, and IRM 4.46, LB&I Examination Process.

4.37.1.1.3
(03-06-2023)
**Roles and
Responsibilities**

- (1) The FPS program provides an organizational structure that is flexible and allows for the timely identification and dissemination of information in a uniform and consistent manner.
- (2) The FPS program is organized under FIP which is within the Enterprise Activities Practice Area of the LB&I Division. The FPS program is responsible for providing technical expertise across all operating divisions.
- (3) The FPS is supported by Director, Financial Institutions and Products, territory managers (TTM), team managers (TM) and FP specialists located throughout the country.
- (4) FP specialists are revenue agents who possess broad expertise in tax law and who have been given special training in financial instruments and terminology, financial industry practices and the taxation of financial instruments and markets. FP specialists serve as issue team members within the LEP. See IRM 4.46.1.1.3.5, Issue Team Member Roles and Responsibilities.
- (5) Within LB&I, the issue-based examination process is intended to facilitate execution and decision making in a collaborative process where all parties work together to resolve issues at the earliest appropriate point in an examination. All practice areas of LB&I share an equal responsibility in conducting a thorough examination. See IRM 4.46.1.1.3, Roles and Responsibilities.
- (6) All IRS personnel have the responsibility to ensure all taxpayer rights are protected and observed. See IRM 4.10.1.2, Taxpayer Rights and Pub 1, Your Rights as a Taxpayer.

4.37.1.1.3.1
(03-06-2023)
**Director, Financial
Institutions and
Products**

- (1) The FIP director provides management oversight of the FPS program and of the FIP practice networks.
- (2) The FIP director ensures the FPS program provides:
 - a. Recommendations for policy and legislative changes.
 - b. Uniform and consistent treatment of industry issues.
 - c. Timely technical assistance to the field.
 - d. Financial marketplace research and analysis.
- (3) The FIP director has a responsibility to:
 - a. Plan for budgeting, staffing and training.
 - b. Develop measures to gauge and monitor program effectiveness.
 - c. Develop and monitor management information systems.
 - d. Coordinate and conduct visits to territories and teams.
 - e. Control nationally coordinated projects.
 - f. Develop and recommend referral criteria.
 - g. Develop position descriptions.
 - h. Maintain a directory of FPS program personnel.
- (4) The FIP director oversees design and delivery of FPS training programs, in coordination with the Enterprise Talent Development office.
- (5) To provide FPS program oversight, the FIP director will:
 - a. Issue guidelines and procedures.
 - b. Assist territories to achieve uniform direction.
 - c. Provide technical and administrative assistance when necessary.

- d. Resolve differences between territories/operating divisions.
 - e. Act as liaison between the field and other national functions.
- (6) The FIP director communicates directly with the Financial Products TTMs and TMs when warranted.
- (7) Additional FIP director responsibilities include:
- a. Plan the expansion of FPS to improve efficiency.
 - b. Ensure matters of importance related to the FPS program are timely brought to the attention of the FIP director, including recommendations for improvement.
 - c. Promote effective communication within the FPS program regarding financial product tax issues.

4.37.1.1.3.2
(03-06-2023)

**Financial Products
Territory Manager**

- (1) A FP TTM is responsible for their respective territory to achieve maximum utilization of specialist staff days and case coverage.
- (2) A TTM periodically conducts workload studies to determine the number and location of FP specialists needed for their territory.
- (3) The following duties are specific to how a TTM supports the FPS program within their territory.
- a. Issue written FPS program procedures.
 - b. Provide for adequate training, both internal and external.
 - c. Conduct periodic group and case visits to evaluate the effectiveness of the FPS program.
 - d. Ensure teams within the territory are responding timely to mandatory and voluntary case referrals.
 - e. Ensure FPS team managers and specialists are actively engaged in the examination process.
 - f. Ensure the director is timely informed of the status of all FPS program projects including those crossing territory lines.
 - g. Ensure the FPS program data contained in various information systems is complete, accurate and updated timely.
 - h. Provide new FPS team managers and specialists with managerial and technical assistance, as applicable, including on-the-job training.
 - i. Ensure the FPS team managers timely evaluate their FP specialists.
 - j. Adhere to IRM 4.46.1.3, Principles of Collaboration.

4.37.1.1.3.3
(03-06-2023)

**Financial Products Team
Manager**

- (1) The FP TM will follow the fundamental responsibilities provided in:
- a. IRM 1.4.1, Management Roles and Responsibilities.
 - b. IRM 4.46.1.1.3.2, Issue Manager Roles and Responsibilities.
 - c. IRM 4.46.1.1.3.3, Manager of Team Members Who Are Not Designated as Case Manager or Issue Manager.
 - d. IRM 4.46.1.3, Principles of Collaboration.
- (2) In addition, the FP manager will:
- a. Advise the FP TTM of staffing, funding, and training needs.
 - b. Support the LB&I issue selection and collaboration process (ISCP).
 - c. Timely assign or reject referrals on the Specialist Referral System (SRS).
 - d. Ensure FP referrals are addressed as early as possible and that FP specialist participation does not delay completion of the examination.

- e. Timely update and verify the accuracy of data in information reporting systems.
- f. Communicate to the director, through the TTM, any new or unusual tax issues, examination techniques and tax avoidance schemes as soon as they are discovered or developed.
- g. Ensure the QRA auditing standards are followed and measurements are monitored.
- h. Support local Appeals and Counsel offices with FP specialists when required, for example for litigation support.
- i. Evaluate FP specialists timely.
- j. Encourage regular written feedback from the referring team or group manager regarding the performance of the FP specialists assigned to a case.
- k. Be involved in the FP portion of cases including, where possible and if schedule permits, case visits, exam planning meetings, mid-cycle reviews, issue resolution meetings with the taxpayer, and post audit critique meetings.
- l. Ensure FP specialists complete all required examination steps and forms, including audit plans, risk analyses, examination reports, and post audit critiques.
- m. Review and approve all required forms and reports to be issued.
- n. Ensure FP specialists correctly report all time related to their assigned cases.
- o. Provide knowledgeable FP specialists to teach training classes for FP program training and for awareness training for other IRS personnel.
- p. Ensure key FP issues are coordinated with the corresponding practice networks.

4.37.1.1.3.4
(03-06-2023)

**Financial Products (FP)
Specialists**

- (1) FP specialists have the following duties and responsibilities:
 - a. Provide specialized technical expertise to all business units within the IRS.
 - b. Provide accountability for efficient, objective and professional expertise leading to the timely completion and resolution of financial product tax issues.
 - c. Participate as a team member in the examination process, which includes planning the examination, performing risk analyses, prioritizing issues, and determining the time required.
 - d. Attend meetings with the examination team and taxpayer, as necessary.
 - e. Prepare and discuss information document requests with the taxpayer.
 - f. Work with the team manager, team coordinator, and other team members or revenue agents to develop and resolve financial product tax issues.
 - g. Work to resolve conflicts within the team and elevating conflicts, as necessary, to the FP team manager.
 - h. Provide feedback about the examination to the FP team manager.
 - i. Coordinate with the corresponding practice networks, the Office of Chief Counsel, and the Office of Appeals, as needed.
 - j. Adhering to IRM 4.46, LB&I Examination Process.
- (2) For LB&I cases, FP specialists will adhere to IRM 4.46.1.1.3.5, Issue Team Member Roles and Responsibilities and generally to IRM 4.46, LB&I Examination Process.

4.37.1.1.3.5
(03-06-2023)
FP HII Cadre

- (1) The role of the FP High Income Initiative (HII) Cadre is to assist examiners in addressing Financial Products related questions and identify the most effective resources available to address identified issues.
- (2) Resources may include inquires to the Financial Institution and Products Practice Network or referrals to assign a Financial Products agent to the case.

4.37.1.1.4
(03-06-2023)
**Program Management
and Review**

- (1) The FPS program seeks to identify, develop, and resolve financial products tax issues that are:
 - a. National in scope
 - b. Significant in dollars
 - c. Important to tax administration
 - d. Important for uniform and consistent treatment
- (2) FPS participates in the LB&I Examination Process (LEP), generally as issue team members and issue team managers. FPS collaborates with the geographic practice area managers in review of potential tax risks and performs timely, effectively planned and managed examinations of financial products and transactions providing for quality results and minimization of burden to the Internal Revenue Service and to taxpayers.
- (3) FPS accumulates and disseminates to the field examination techniques, information about tax avoidance and evasion schemes, and other information useful in planning and conducting examinations.
- (4) FPS monitors the progress and results of issues through various information management systems.
- (5) FPS works closely with geographic practice area exam teams, international examiners, subject matter experts within the practice networks, and the Office of Chief Counsel in order to achieve FPS objectives and goals.

4.37.1.1.5
(03-06-2023)
Program Controls

- (1) The Issue Management System (IMS) is a case management application sponsored by LB&I. IMS provides case management functionality to LB&I, SB/SE speciality groups, and Appeals. IMS is used to monitor various elements of FPS inventory. For example, Information Document Requests ((IDRs), approving examination plans, risk analysis, and Notice of Proposed Adjustment (NOPAs).
- (2) FP management periodically reviews reports using the Issue Based Management Information System (IBMIS). IBMIS is a reporting tool containing day-to-day information gathered on the Audit Information Management System (AIMS). The system provides team managers, territory managers, executives and analysts a centralized system for managing case information for tracking, planning, and reporting.

4.37.1.1.6
(03-06-2023)
Terms and Acronyms

- (1) See Exhibit 4.37.1-2, Acronyms, for a list of commonly used acronyms.

- 4.37.1.1.7
(03-06-2023)
Related Resources
- (1) The FPS website is <https://irssource.web.irs.gov/LBI/Lists/FP/AllItems.aspx>.
 - (2) More information can also be found on the Knowledge Management site at: <https://portal.ds.irsnet.gov/sites/vl039/Pages/Default.aspx>.
- 4.37.1.2
(03-06-2023)
Criteria and Procedures for Referrals to FP
- (1) Financial Products Specialty workload is assigned through the Specialist Referral System (SRS). Instructions and criteria for mandatory referrals are located on the SRS website.
- 4.37.1.2.1
(03-06-2023)
Referrals
- (1) Financial Products Specialty workload is identified through various processes.
 - a. Cases may be identified by case managers or their designee. See IRM 4.46.3.2.1 , LB&I Examination Issue Selection and Collaboration Process (ISCP) and IRM 4.46.3.2.6.1 , Specialist Referrals.
 - b. If a revenue agent starts a case without an FP specialist already assigned, the revenue agent can make a referral to FP in the SRS.
 - c. For workload identified through the campaign selection process, the FP specialist will be involved in various campaigns on an as-needed basis.
- 4.37.1.2.2
(03-06-2023)
Mandatory FP Specialist Referrals
- (1) Large Corporate Compliance (LCC) cases are a mandatory FPS referral at the beginning of the examination to allow the Financial Products specialist to participate during the planning phase.
 - (2) HII cases are a mandatory FP SRS referral for all new starts, including related pick-ups, as of June 21, 2022.
- Note:** Notate on the SRS Referral *“HII case - mandatory referral required.”*
- 4.37.1.2.3
(08-12-2019)
Voluntary FP Specialist Referrals
- (1) The FPS program encourages referrals. Returns not requiring mandatory referrals may be referred if FP specialist assistance is appropriate. Examiners should make referrals as early as possible upon identification of a financial products issue. Informal assistance is available to determine if a referral should be made. Informal assistance may not be used in lieu of mandatory referral requirements.
 - (2) Although not identified as mandatory referrals on SRS, the FPS program recommends that CBF assignments be made for Form 1065 partnerships and joint ventures with assets greater than \$10 million in order for an initial risk assessment to be conducted.
- 4.37.1.3
(08-12-2019)
FP Specialist’s Report
- (1) This subsection covers the preparation, review and routing of the FP specialist’s report.
- 4.37.1.3.1
(03-06-2023)
Preparation of FP Specialist’s Report
- (1) FP specialists will follow IRM 4.46.6.2, Workpaper Organization and Considerations. This includes the WP Naming Convention and the requirement to have documents uploaded to IMS.
 - (2) Upon completing an assignment, the FP specialist will prepare an FP specialist’s report. The report will be prepared for all referrals, including no changes.

- (3) The FP specialist's report will use the proper forms required in IRM 4.46.6, Workpaper and Reports Resources, and IRM 4.10.8 , Report Writing, depending on the nature of the referral.
- (4) The FP report must include a cover sheet, listing administrative data such as date started, date completed, time charged and proposed adjustments by UIL code and disposition. See Exhibit 4.37.1-1 for a sample FP specialist's report cover sheet.

Note: There are a variety of formats for this cover sheet that may be in use. The cover sheet in Exhibit 4.37.1-1 is just one example.

4.37.1.3.2
(08-12-2019)

**Reviewing and Routing
of FP Specialist's Report**

- (1) The FP specialist's report will be routed to the FP team manager for review and approval.
- (2) The FP team manager, or designee, will review and approve the FP specialist's report promptly (generally within five business days) to avoid any delay in disposition and closure of the case.
- (3) The final FP specialist's report will be forwarded to the referring manager.

Sample Financial Products Specialist's Report Cover Sheet

1. Name, address, EIN/SSN of Taxpayer	Activity Code	Type of Return		Start Date (dd/mm/yyyy)
	BOD	FP Team #	FP Manager	Report Date (dd/mm/yyyy)

3. Recommendation by Financial Products Examiner					
Year Ended (or period)	Taxable Income Adjustments Increase or (Decrease)	Estimated Deficiency	SAIN / UIL Combo	Disposition Type	Examination Hours
Total					
Total Agreed					

Comments:

Financial Products Examiner:	Contact Information:
Financial Products Examiner Signature:	Date Signed:
Financial Products Team Manager:	Contact Information:
Financial Products Team Manager Signature:	Date Signed:

Exhibit 4.37.1-2 (03-06-2023)**Acronyms**

The table below defines commonly used acronyms:

Acronym	Definition
ADCCI	Assistant Deputy Commissioner Compliance Integration
CBF	Case-Built File
EUP	Employee User Portal
FIP	Financial Institutions and Products
FP	Financial Products
FPS	Financial Products Specialty
HII	High Income Initiative
IMS	Issue Management System
ISCP	Issue Selection and Collaboration Process
LB&I	Large Business and International
LCC	Large Corporate Compliance
LEP	LB&I Examination Process
LIN	LB&I Imaging Network
MIRA	Manager Initial Risk Assessment
REIT	Real Estate Investment Trust
REMIC	Real Estate Mortgage Investment Conduit
RIC	Regulated Investment Company
SIRA	Specialist Initial Risk Assessment
SRS	Specialist Referral System
TM	Team Manager
TTM	Territory Manager
UIL	Uniform Issue List
WP	Workpaper